

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

**CLIFTON R. SIMPSON,
Plaintiff,**

v.

**UNITED STATES OF AMERICA,
Defendant.**

Civil Action No. 2:20cv592

*In re: Clifton R. Simpson v. Stephanie Delette
Waithe, Case No. GV20020367-00, General
District Court for the City of Norfolk*

NOTICE OF SUBSTITUTION

PLEASE TAKE NOTICE that, pursuant to the Federal Employees Liability Reform and Tort Compensation Act, 28 U.S.C. § 2679 (the “Westfall Act”), the United States of America is hereby substituted for the individual defendant, Stephanie Delette Waithe, with respect to Clifton R. Simpson’s tort claim herein. The grounds for this substitution are as follows:

1. Stephanie Delette Waithe, an employee of the United States Postal Service (“USPS”) in Norfolk, Virginia, has been named as a defendant in an action styled *Simpson v. Waithe*, GV20020367-00, which was filed in the City of Norfolk General District Court on October 28, 2020. Ms. Waithe is employed by USPS as a mail carrier. Mr. Simpson alleges he sustained personal injuries resulting from an auto accident purportedly caused by Ms. Waithe’s negligence. Mr. Simpson seeks \$25,000 in damages, plus interest and costs. Mr. Simpson’s action sounds in tort.
2. The exclusive remedy for persons claiming damages for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful acts or omissions of federal employees taken within the scope of their office or employment lies in a suit against

the United States of America under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2401(b), 2671 et seq. (“FTCA”), as amended by the Westfall Act.

3. Upon certification by the Attorney General or his designee that an individual defendant was acting within the scope of her federal office or employment at the time of the incident out of which a state or common law tort claim arises, any civil action arising out of the incident shall be deemed an action against the United States, and the United States shall be substituted as the sole defendant with respect to the claim. 28 U.S.C. § 2679(d). The Attorney General has delegated certification authority to the United States Attorney. 28 C.F.R. § 15.4.

4. G. Zachary Terwilliger, U.S. Attorney for the Eastern District of Virginia, has certified that at the time of the conduct alleged, Ms. Waithe was acting within the scope of her employment as an employee of the United States. *See* ECF No. 1-2.

Accordingly, the United States of America has been substituted by operation of law as the sole defendant with respect to Plaintiff Simpson’s tort claim in this action, and Ms. Waithe is dismissed as a defendant in this action. *See* 28 U.S.C. § 2679(d)(2).

Respectfully submitted,

UNITED STATES OF AMERICA,
Defendant

G. ZACHARY TERWILLIGER
United States Attorney

By: /s/ Anna M. McKenzie
Anna M. McKenzie, VSB No. 84022
Assistant United States Attorney
Office of the United States Attorney
101 West Main Street, Suite 8000
Norfolk, Virginia 23510-1671
Telephone: (757) 441-6331
Facsimile: (757) 441-6689
Email: Anna.McKenzie@usdoj.gov
Counsel for United States of America

CERTIFICATE OF SERVICE

I hereby certify that, on the 24th day of November, 2020, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of electronic filing (NEF) to all registered e-filers.

I hereby certify that, on this 24th day of November, 2020, I will cause a true and correct copy of the foregoing document to be mailed by U.S. first class mail, postage prepaid, addressed to the following:

Robert C. Neeley, Jr., Esq.
Neeley Law Group, PLC
P.O. Box 3395
Norfolk, Virginia 23514
Counsel for Plaintiff Clifton R. Simpson

By: /s/ Anna M. McKenzie
Anna M. McKenzie, VSB No. 84022
Assistant United States Attorney
Office of the United States Attorney
101 West Main Street, Suite 8000
Norfolk, Virginia 23510-1671
Telephone: (757) 441-6331
Facsimile: (757) 441-6689
Email: Anna.McKenzie@usdoj.gov
Counsel for United States of America